IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.515 OF 2006
IN
NOTICE OF MOTION NO.1466 OF 2006
IN
SUIT NO.1578 OF 2006
WITH
CIVIL APPLICATION NO.51 OF 2007

1. Methodist Church in India,
a Society, registered under the
Indian Societies Act, 1860,
having its office at inter alia
Methodist Centre, 21 YMCA Road,
Mumbai - 400 008.

2. Bishop Nimrod Christian,
Delhi Episcopal Area,
Bishop's House, 12 Belvered Road,
Near Tis Hazari,
Delhi - 110 054.

3. Bishop Taranath S.Sagar,
Hyderabad Episcopal Area,
Bishop's House No.5-8-336 Chapel Road,
Hyderabad - 400 001.

4. Bishop Samuel Singh,
President, COB Bareily Episcopal Area,
Bishop's House, Claraswain Hospital
Compound, Civil Lines, Bareily-1.

5. Bishop S.V.Sampath Kumar,
Bangalore Episcopal Area,
Baldwin Methodist Educational Centre,
13 Convent Road, Museum Road,
Bangalore - 600 025.

6. Bishop Dr.S.R.Thomas,
Lucknow Episcopal Area,
Bishop's House, 37 Cantonment ...Appellants/
Road, Lucknow - 226 001 (U.P.). Defendants

Versus

Bishop Dr.Dinesh K.Agarwal,
Bishop's House, 22 YMCA Road, ...Respondent/
Mumbai - 400 008. Plaintiff

.....

Mr.M.P.Vashi i/b M/s.M.P.Vashi & Associates for Appellants.

Mr.R.V.Govilkar with Mr.V.A.Gangal and Mr.D.D.Belosay for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 26, 2007.

ORAL JUDGMENT :

1. This Appeal from Order takes exception to the Judgment and Order dated 30th June 2006 under Notice of Motion No.1466 of 2006. The Respondent No.1/original Plaintiff was Bishop of the Bombay Episcopal area which comprises of Maharashtra and Gujarat. On account of certain complaints against the Respondent No.1/Plaintiff, Council of Bishops suspended the Respondent No.1 from acting as Bishop. This decision was not challenged by the Respondent No.1/Plaintiff himself, but by one

M.C.I.Gideonbhai B.Christian before the City Civil Court at Ahmedabad. Against the order passed by the City Civil Court, Ahmedabad, matter was carried before the Gujarat High Court in Appeal from Order No.393 of 2004. In the said proceedings, the Respondent No.1 was represented by Advocate. From the order passed by the Gujarat High Court dated 30th March 2005, it is seen that oral order was passed by the Court on the basis of "consensus" between the parties. The order reads thus:

> "1. Heard the learned counsel for the respective parties. As a result of the hearing, there is a consensus between the parties on the basis of which the following arrangement will continue till the disposal of the suit or till the inquiry against the defendant no.5 will be over, whichever is earlier:
>
> > "(1) The respondent no.1-Council of Bishops will suggest five names for being appointed as an Inquiry Officer. Such names will be suggested within three weeks from today. Out of the said names, the respondent no.5 will select a name within a week from the date of receipt of such names."
>
> (2) Upon selection of the name Inquiry Officer will be appointed immediately and he will conduct and finish the inquiry within a period of four months on condition that respondent no.5 will

cooperate in the inquiry. In short, the entire proceedings of inquiry, including suggestion and selection of names will be completed within a period of five months.

(3) During this period, the suspension order will be revoked on the following conditions:

(a) The respondent no.5 will be permitted to continue day-to-day spiritual activities.

(b) Administrative decisions will be taken after taking prior concurrence of the President of the Council of Bishop and Bishop Mr.Samuel S.Singh. The decisions which will be taken by respondent no.5 will be reviewed by the aforesaid two persons and final decision will be taken by them with regard to implementation or revocation of such decisions. It is clarified that the decision will not be implemented unless the concurrence is received as stated hereinabove.

(c) If the Regional Conference is not already called, the same will not be called by either side till the inquiry is over, and if it is already called, the same will be postponed till the inquiry is over.

(d) Respondent no.5 will not chair in any meeting or conference.

(e) Respondent no.5 will not visit places which are referred in the inquiry report/chargesheet.

(4) This arrangement will continue till inquiry is over. However, it is clarified that if respondent no.5 is not cooperating with the inquiry, the present order will not operate after five months. But if the inquiry is delayed because of respondent no.1 or the Inquiry Officer beyond the

> period of one year, the restrictions mentioned above vide clause (3) will not operate.
>
> (5) It is clarified that this arrangement is made without prejudice to the rights and contentions of both the sides and accepted at the suggestion of the Court.
>
> 2. The appeal and cross-objections are disposed of in terms of the "above directions." The parties are directed to abide by the conditions stated hereinabove.
>
> 3. The appeal and cross-objections are disposed of in terms of the above order. No order as to costs. Liberty to apply in case of difficulty. D. S. permitted today." (emphasis supplied)

2. After the said order, Enquiry Officer was appointed. The Respondent No.1 was served with seven charges, for which Respondent No.1 was required to face the proposed action. The charges read thus:

> CHARGE NO.1
> (Violation of Para 1261(3)
>
> Imprudent and unministerial conduct.
>
> Bishop Dinesh K.Agarwal being a Presiding Officer of the General Conference, Executive Board/Executive Council para 377(11) himself was opposing meeting of Executive Council of 04.01.2003. His imprudent and unministerial conduct was

evident by

1) refusing to sign the roll call at the commencement of meeting

2) intimidating to cancel the meeting without signing the roll call.

3) Signed the roll call after much deliberation.

4) Not complying with the provision of Para 510 Art.IX(3) viz

a) Deliberate and inordinate delay in certifying the list of elected delegates of the Regional Conference to the General Conference and submission to the General Secretary Office.

b) Refusal to comply with Para 1109 Art.V in sending Regional

c) Conference apportionment towards the expenses of the General Conference.

d) Conduct and attitude in the said meeting evidencing his premeditated plans for stalling the General Conference along with other members who are identified as the person against holding of the General Conference.

CHARGE NO.2
Violation of Para 1261(1), (3) & (5)

Bishop Dinesh K.Agarwal brought disrepute to the office he holds and to the temporal authority of the office of the Bishop by his conduct in instigating members of Methodist Church to institute cases before Court of Law to stall the General Conference Meeting scheduled to be held in Jabalpur in the State of Madhya Pradesh from 10.02.2003 to 16.02.2003. By his conduct he has lowered the prestige and honour of the office of the Bishop in the

eyes of the follower of Methodist Church and brought disrepute to the movement of Methodist Church. Thus Bishop Agarwal's conduct and action are in violation of the provisions contained in para 1261(1), (3) & (5).

CHARGE NO.3
Violation of para 1261(1), (3) & (5)

Bishop Agarwal brought disrepute to the office of Bishop in his subsequent conduct in scuttling the enquiry process initiated by the Council of Bishops to know the truth in the allegation regarding his involvement in filing cases before courts of law to stall the General Conference Meeting. Her has tried to influence the witnesses not only to speak falsehood before the Enquiry Committee which was enquiring to find out a prima facie case on the allegations made against Bishop Agarwal, but also influenced them to abstain from attending the Enquiry Committee by offering illegal gratification. The above action is in violation of the provisions contained in Para 1261(1), (3) & (5).

CHARGE NO.4
Violation of Para 1261(1), (3) & (5)

Bishop Agarwal tried to interfere with the process of justice by seeking to influence the witnesses to speak falsehood. A spiritual head is expected to preach and adhere to the truth and justice. As thousands of Christians look upon the Bishop as their spiritual head. Such conduct is unbecoming of a person holding such a spiritual office and violates para 1261(1), (3) & (5).

CHARGE NO.5
Violation of Para 1261 (5) & (7)

Bishop Dinesh Agarwal has violated code of

conduct and discipline by creating dissension in holding parallel worship of MCI Day. He has created dissension within the Church showing favouritism to certain clergies and lay people, therefore the Church witnesses groupism, harassment and intimidation that resulted in the exit of several ministers either by force resignation and or by termination.

CHARGE NO.6
Violation of Para 1261 (7)

Bishop D.K.Aggarwal has violated Para 1261(7) of the Book of Discipline. He appointed to District Superintendents viz., Rev. N.L.Karkare and Rev.Chandrakanth Jadhav even though they do not possess qualifications prescribed under Para 379(1) Art.XVI of the Book of Discipline. Rev.Karkare does not fulfil the requirement of 4 years experience as Pastor In charge and Rev. C.Jadhav does not fulfil the requirement of 6 years in full connection. Bishop Agarwal was aware of the facts that the aforesaid persons were not qualified still he appointed them in violation of Book of Discipline.

CHARGE NO.7
Violation of Para 1261(7)

Bishop Agarwal failed to perform the duties assigned to him under Article 377 (13) as Bishop Sampath Kumar had to perform confirmation of 283 children above 12 years as full members, which has been long overdue. Bishop Agarwal had violated Para 218 of Art.VI of the Book of Discipline declining to grant full membership to preparatory candidates without justifiable reasons. He also violated the provisions contained in Article 217(V)(3) as he refused to confirm children between 12-16 years of age as full members of Vernon Memorial Methodist Marathi Church, Kalyan and the Oldham

> Methodist English Church. This is in violation of Article 1261(3) and ministerial conduct. The members of Oldham Methodist English Church complained by a Partition dated 25.01.2003 that Bishop showed disrespect towards the Holy Sacraments by not following the Church's established doctrinal standards of worship and rituals (Para 2001)."

3. The Enquiry Officer was appointed as per the choice exercised by the Respondent No.1 himself. The Enquiry Officer, after giving opportunity to the Respondent No.1 and on the basis of materials on record, proceeded to record finding of guilt against the Respondent No.1 in respect of charge Nos.2, 5, 6 and 7 respectively. The Enquiry Officer submitted her report dated 14th February 2006, which was placed before the Executive Council in the meeting held on 25th March 2006. The Respondent No.1 was given notice to appear to show-cause as to why the proposed action should not be taken against him. Respondent No.1 participated in the said meeting of the Executive Council when after deliberations, considered view was expressed by the Executive Council to terminate his appointment/service by accepting the Enquiry Officer's report. The Respondent No.1 was informed

about the possible decision and was called upon to consider whether he would prefer to take voluntary retirement. Before passing final orders, the Executive Council thought it appropriate to give some opportunity to the respondent No.1 to consider the offer given by the Executive Council for which purpose, meeting was deferred till 29th March 2006. On 29th March 2006, however, the Respondent No.1 did not attend the meeting of the Executive Council and instead, informed that he was advised rest being unwell. As the Executive Council did not get response from the Respondent No.1 about the offer to take voluntary retirement - instead of the proposed action of termination, had no option but to proceed in the matter. Accordingly, the Executive Council decided to terminate the assignment/service of the Respondent No.1. Formal order came to be passed on the basis of the said decision on 30th March 2006 which was communicated to the Respondent No.1 and served on him on 3rd April 2006. The Executive Council in its meeting on 29th March 2006 also took decision to appoint two separate persons as Bishops for Maharashtra and Gujarat areas respectively. As a result of that

decision, the said persons came to be appointed as Bishop of Maharashtra and Gujarat area respectively as the service of Respondent No.1 stood terminated in view of the order dated 30th March 2006. The said two persons, it is stated took over the charge of their respective offices. Only thereafter, the Respondent No.1 filed suit in the Bombay City Civil Court challenging the action of the Executive Council praying for following reliefs:

> "a) That this Hon'ble Court be pleased to declare that the resolution passed by the Defendants in the meeting held on 25th March, 2006 and also by the Executive Council of the Methodist Church of India (M.C.I.) at the Special Meeting held on 29th March, 2006 is illegal, ultravires, bad in law and void ab-initio and liable to be quashed and set-aside.
>
> b) That this Hon'ble Court be pleased to issue a permanent order and injunction restraining the Defendants by themselves, their servants, agents and/or representatives from implementing and/or taking any steps and/or interfering with and/or preventing the Plaintiff from acting as a Bishop for the territory of Episcopal area of Maharashtra and Gujarat in pursuance to the said resolution dated 29th March, 2006,
>
> c) ad-interim relief in terms of prayer (b) above;
>
> d) That the costs of the suit be provided

for

e) for such other and further reliefs as this Hon'ble Court deems fit and proper in the nature and circumstances of the case may require."

4. The Suit was filed on 10th April 2006. In this Suit, the Respondent No.1 took out Notice of Motion No.1466 of 2006, praying for following reliefs during the pendency of the Suit:

"a) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to issue a temporary order and injunction restraining the Defendants by themselves, their servants, agents and/or representatives from implementing and/or taking any steps and/or preventing the Plaintiff from acting as a Bishop for the territory of Episcopal area in pursuance to the said resolution dated 29th March, 2006,

b) ad-interim relief in terms of prayer (a) above;

c) That the costs of the suit be provided for

d) for such other and further reliefs as this Hon'ble Court deems fit and proper in the nature and circumstances of the case may require."

5. In the present Appeal from Order, the

Judgment and Order passed by the City Civil Court, Bombay on the said Notice of Motion is put in issue. It is unnecessary to advert to the other details of the proceedings such as passing of ad-interim order by the Trial Court and which decision was set-aside by this Court in Appeal from Order No.280 of 2006 decided on April 27 of 2006. The Trial Court by the impugned Judgment and Order has made the Notice of Motion filed by the Respondent No.1 absolute in terms of prayer clause (a) by answering all the three issues, namely, prima facie case, balance of convenience and irreparable harm and injury, in favour of the Plaintiff / Respondent No.1. The Appellants / Defendants had contended that the nature of relief claimed by the Respondent No.1 in the fact situation of the present case would result in granting mandatory order. That objection has also been negatived by the Trial Court by holding that the Respondent No.1/Plaintiff has made out prima facie case. That issue is discussed by the Trial Court in Paragraphs 37 and 38 of the impugned Judgment. Issue regarding balance of convenience is discussed in Para 39, whereas issue regarding

irreparable harm and injury is considered in Para 40 of the impugned Judgment.

6. Insofar as issue of prima facie case is concerned, the Trial Court has taken the view that the Defendants did not follow Paras 1267 and 1270 of the Book of Discipline. It is further found that the Defendants took decision to terminate the Plaintiff behind the back of the Plaintiff when he could not attend the meeting on 29th March 2006 due to illness and medical ground. The Trial Court has then observed that the decision of the Defendant to appoint Defendant Nos.2 and 5 in place of the Plaintiff was taken in undue haste. It has then observed that the Enquiry Officer's report was under challenge before the Judicial Council, for which reason, the Executive Council ought not to have precipitated the matter. The principal finding on the basis of which the Trial Court proceeds to grant relief in favour of the Plaintiff is that it is only the General Conference who had appointed the Plaintiff as Bishop, could have terminated him. According to the Trial Court, in fact, there was no provision in the Book of

Discipline to terminate the Bishop. It has then found that the termination of the Plaintiff by the Executive Council was without authority of law. At the end, the Trial Court records that the whole idea behind the action against the Plaintiff was to enable the Defendants to take control of the Institution to siphon of the funds and to misappropriate the property of the Church, which cannot be ruled out.

7. Although the Trial Court has separately answered the issue of balance of convenience, more or less, has adverted to the same reasons which weighed with it to answer the issue of prima face case made out by the Plaintiff-such as there is no provision in the Book of Discipline and Rule to remove the Bishop; that no opportunity was given to the Plaintiff to give his apology and the like. While answering the issue of irreparable loss and injury, once again matters which were relevant for considering the issue of prima facie case have been adverted to for answering the same. The Trial Court has observed that Defendants have not produced any evidence that the Defendant Nos.2 and

5 have been appointed in consonance with the provisions of the Book of Discipline. That no minutes of the meeting held by the Executive Council were produced before the Court to establish that due process of law has been followed. It then proceeded to observe that the decision on the Suit may take several years, on account of which grave harm and irreparable loss will be caused to the Plaintiff, for which reason, he was entitled for interim relief. As mentioned earlier, the Trial Court proceeded to reject the objection of the Appellants/Defendants that the interim relief as prayed for by the Plaintiff if granted, would result in passing mandatory order at the interlocutory stage.

8. The Appellants/Defendants have questioned the correctness of the view taken by the Trial Court. According to the Appellants, the decision of the Trial Court cannot be sustained either on facts or in law. On the other hand, according to the Respondent No.1/Plaintiff, there is no error in the conclusion reached by the Trial Court and no interference is warranted with the interim order

passed by the Trial Court which will operate between the parties only during the pendency of the Suit. Mr.Govilkar for Respondent No.1 has supported the finding recorded by the Trial Court and has mainly urged three points before this Court to justify the view taken by the Trial Court. According to him, even on close scrutiny of the provisions contained in the Book of Discipline, it is not possible to assume that Bishop can be removed from service, much less, by the Executive Council. According to him, if at all, such power is to be exercised, it will only have to be exercised by the General Conference, who is the appointing Authority of the Bishop. It is next contended that the Plaintiff had questioned the correctness of the Enquiry Officer's report before the Judicial Council and which challenge was still pending before the said body. Until the said representation was to be finally disposed of by the Judicial Council, the question of removal of the Plaintiff by the Executive Council would not arise. It is lastly contended on behalf of Plaintiff that the action of the Executive Council is colourable exercise of power. According to Mr.Govilkar, there

was no written complaint against the Plaintiff on the basis of which the disciplinary action could have been initiated or pursued. Secondly, no show-cause notice was issued against the Plaintiff before passing the final order which was mandatory. Lastly, no attempt was made by the Executive Council to settle the matter which is the spirit of the rules provided in the Book of Discipline.

9. The question that arises for my consideration is: whether the view taken by the Trial Court can be sustained in fact or in law? To examine this position, I shall straight away consider the correctness of the argument advanced on behalf of the Plaintiff that there is no provision in the Book of Discipline to remove Bishop as such. Indeed, the provision regarding appointment of Bishop is traceable to Para 13.Art.III. Clause 12 thereof empowers the General Conference to elect and appoint Bishops. There is another provision which re-inforces the position that appointment of Bishop is by election, to be done by the General Conference, being Para 366.Art.III. It is the power and duty of the

General Conference to elect and appoint Bishops in such manner and in such number as shall be determined therein. The General Conference is empowered to fix their (Bishops) qualification, powers, duties, responsibilities, privileges, limitations, grounds of service, provident fund and/or any other emoluments or expenses which go with their office and shall appoint their assigns. The Respondent No.1 was elected by the General Conference in December 1994 and when the action in question has been taken against him, he was catering to the areas of Maharashtra and Gujarat.

10. This Court is called upon to consider the question: whether Bishop can be removed from his Office or his Office is a tenure appointment. According to the Plaintiff, there is no provision in the Book of Discipline which provides for removal of Bishop. To test this submission, let us turn to the relevant provisions concerning Bishop. The same are found in Chapter XVI titled as the Episcopacy. As mentioned earlier, Para 366.Art.III provides that the General Conference shall elect Bishops in such numbers and on such terms as shall

be determined by the General Conference from time to time. Para 367.Art.IV in the said Chapter deals with the requirements or eligibility for election to the office of the Bishop. Para 369.Art.VI provides that in the case of brief illness or disability or absence of the Bishop from his area or for any other valid reason for four consecutive months, the Executive Committee of the Council of Bishops, upon request of the Area Bishop concerned, may arrange for supervision of that area by one from among the active Bishops for this period. Para 370.Art.VII makes provision to deal with the situation of prolonged illness and disability of the concerned Bishop beyond period of four months, in which case, the Executive Committee of the Council of Bishops may appoint one of the retired Bishops to that episcopal area or divide that area among the active Bishops until the Bishop on leave resumes his duties. Para 371.Art.VIII under the same Chapter deals with the vacancy created on account of death or resignation of the Bishop. Chapter XVIII titled ‘Resignation and Retirement of Bishops’ stipulates mechanism for that purpose. Para 386.Art.I deals with voluntary resignation of

a Bishop from the episcopacy. Plaintiff, however, relies on Para 387.Art.II which provides for retirement of a Bishop on his 65th birthday. It further provides that in the event of his 65th birthday falling any time within the quadrennium, he shall be continued in the office till the end of the quadrennium. Para 389.Art.IV relates to the voluntary retirement of Bishop when he has reached the age of 60 years. On the basis of these provisions, it is argued that the appointment to the Office of Bishop is a tenure appointment and for which reason, the Bishop, once elected, cannot be removed. It is, however, not possible to countenance such a wide proposition. For, Para 388.Art.III, which is of some significance to our case, provides for retirement of the Bishop by General Conference. It postulates that the Bishop may be retired by the General Conference before his 65th birthday for the reasons deemed sufficient to retire him. The Bishop so retired shall be entitled to all benefits allowed to the retired Bishops.

11. Before we proceed further, it will be

apposite to advert to the provisions regarding the organisational set up. In Part-I of the Book of Discipline, Division Two thereof, provides for the Organisation. Para 6.Art.I (below Section I: Conferences) provides that there shall be a General Conference at the All India Level with such powers, duties and privileges as are provided in the Rule Book. Other organisation as provided in Para 7.Art.II is a Regional Conference at the regional level with such powers, duties and privileges as are provided in the Rule Book. Besides, the same Chapter provides for establishing District Conference at the District level. The composition of General Conference is provided in Section II para 11.Art.I thereof. Insofar as the composition of the Executive Council of the General Conference, that provision is found in "Division Three Administrative Structure". Para 28.Art.I provides that there shall be Executive Council of the General Conference. Clause (1) of Para 28 provides that the Executive Council shall be elected by the General Conference at its regular session for a quadrennium in such number as may be determined from among the members present at the session.

Clause (2) of Para 28 which is of significance in our case, provides that the Executive Council shall act on behalf of the General Conference during the interim of its sessions on such matters as are not provided through actions or legislations of the General Conference. Clause (4) of Para 28 provides that the Executive Council shall be presided over by the active Bishops in rotation.

12. On reading the provisions pertaining to the Office of the Bishops contained in Chapter XVI, in particular, para 366.Art.III, it is certain that Bishop is elected by the General Conference. The provision regarding "Resignation and Retirement of Bishops" is in Chapter XVII. Para 388.Art.III, provides that Bishop can be retired by General Conference before his 65th birthday on the grounds specified therein. Thus understood, it is not possible to countenance the argument that there is no power to remove the Bishop at all or for that matter, before expiry of his tenure. The question is: whether the power exercised by the "Executive Council of General Conference" against the Plaintiff in the present case is legitimate and

consistent with the rules of the Book of Discipline. Ordinarily, the authority empowered to elect or appoint a Bishop (General Conference) alone can possess the power to remove or retire such person. Para 388.Art.III is a provision restating that position. In the present case, however, the Executive Council of the General Conference has passed the impugned decision of retiring the Plaintiff from the post of Bishop. There is no dispute that the impugned decision is taken by the Executive Council during the interim sessions of the General Conference. By virtue of clause (2) of Para 28.Art.I, the Executive Council is authorised to act on behalf of the General Conference during the interim of its sessions on such matters as are not provided through actions or legislations of the General Conference. The issue is fully answered if we were to refer to Para 376.Art.XIII. It provides that a Bishop is amenable for his conduct and discharge of his episcopal duties to the General Conference and to the Executive Council in between its quadrennial session. On conjoint reading of all the provisions, it is seen that during the interim of

quadrennial sessions of the General Conference, the Executive Council has the authority to act on behalf of the General Conference in this behalf. Thus understood, the impugned decision of the Executive Council of the General Conference is legitimate and consistent with the rules. Accordingly, the opinion expressed by the Trial Court that there was no power to proceed against the Plaintiff, cannot be sustained having regard to the express provisions referred to in the earlier part of this Judgment.

13. The next issue is: as to in what circumstances, the Bishop can be retired or removed; and the procedure to be observed in that behalf. In Chapter VII of the Book of Discipline, provision is made with regard to investigation and trial of a Bishop, Minister, Deaconess and Lay Person. Section I thereof provides for investigation and trial of a Bishop, Minister and Deaconess. Para 1261 is a provision which deals with offences for which a Bishop, Minister or Deaconess may be tried. The same reads thus:

"1261. Offences for which a Bishop, Minister, or Deaconess may be tried.

A bishop, minister, or deaconess shall be answerable to his Conference and shall be liable to investigation and trial on the following charges :

1. Violation of the moral law, or commission of a crime.

2. Conviction in any criminal or civil court on a charge involving moral turpitude.

3. Imprudent or unministerial conduct, dishonour to the Holy Bible and disrespect for the Book of Discipline by public burning, tearing or other such act; and acts, conduct or life style as tends to bring the ministry or the Church into disrepute.

4. The private or public dissemination of teachings contrary to the official Creeds of the Church; Articles of Religion or the established doctrinal standards of the Methodist Church in India.

5. Violation of ministerial vows and promises and the misuse or habitual neglect or ministerial office and assigned duties.

6. Assault, giving and accepting gratification for election purposes, use of drugs and intoxicants.

7. Maladministration in contravention of the Book of Discipline.

8. Holding services within the bounds of another Pastoral Charge without consent.

9. Violating the Marriage Rules of the Church and disregarding the rules and

advices regarding divorce.

10. Refusal to accept the appointments of the bishop, or an obstructive attitude that tends to prevent others from accepting their appointments.

11. Going to a Court of Law against the Church or an official of the Church without first exhausting the provisions and procedures of the Book of Discipline.

12. Encroachment of church property, unauthorised and illegal occupation of any church property; unauthorised, improper and illegal use of church property; failure or refusal to vacate residential premises and/or church property within stipulated time as notified or required.

13. Direct or indirect embezzlement or misappropriation of funds, neglect of duty by which it is found that a minister is responsible for such embezzlement or misappropriation, or of unauthorised, improper and illegal use of church or institutional funds."

14. According to the Counsel for the Plaintiff, clause 11 of this provision stands deleted in view of the decision of the Calcutta High Court. We are not concerned with that provision. In our case, the Enquiry Officer has recorded finding of guilt against the Plaintiff for offences or violation of Para 1261 (1), (3), (5) and (7) in the light of proved charges 2, 5, 6 and

7.

15. Be that as it may, the procedure for investigation and enquiry is spelt out in Section III Para 1263.Art.I to Para 1273.Art.XI, make provision regarding the manner in which the investigation and enquiry is to be held against the delinquent official. The question is: whether the Executive Council had justly invoked the powers against the Plaintiff in the fact situation of the present case. We have already referred to the seven charges formulated against the Plaintiff for which the matter was investigated and tried by an independent Enquiry Officer who was nominated with the consent of the Plaintiff. The Enquiry Officer has found the Plaintiff guilty of Charge No.2 regarding violation of Para 1261 (1), (3) and (5); Charge No.5 regarding violation of Para 1261(5) and (7); Charge No.6 of violation of Para 1261(7); and Charge No.7 of violation of Para 1261(7). As the charges which are proved against the Plaintiff were serious enough warranting disciplinary action, no fault can be found with the Executive Council

for having proceeded with the investigation and trial thereof.

16. According to the Plaintiff, it was not open to the Executive Council to take final decision in the matter when the Plaintiff had challenged the Enquiry Officer's Report before the Judicial Council which is the highest adjudicatory body. The argument seems to be attractive, however, it clearly overlooks two aspects. Firstly, there is no provision in the Rule Book which permits challenging the Enquiry Officer's Report before the Judicial Council. The powers and duties of the Judicial Council have been circumscribed by Para 59.Art.IV which reads thus:

> **"59. Art.IV.Powers and Duties of the Judicial Council.**
>
> The Judicial Council shall have the following powers and duties:
>
> 1. To have appellate and original jurisdiction in all judicial matters of the Church. Its decision shall be final or Council of Bishops may seek advice from the Judicial Council without prejudice to the Judicial Council's right to decline jurisdiction over any matter, that is referred to it.

2. To determine the constitutionality of any legislative act of the General Conference upon an appeal of a majority of the Council of Bishops, or one-tenth of the members of the General Conference, and to determine the constitutionality of any action of the Regional Conference, District Conference or Pastorate Conference upon the appeal of one-tenth of the members of the same.

3. To hear and determine any appeal from a bishop's/chairman's ruling, while presiding, on a question of law made in the Regional/General Conference if the said appeal has been made by one-tenth of the members of that Conference present and voting.

4. To hear and determine any appeal from a district superintendent's/chairman's ruling on a question of law made in the District Conference/Pastorate Conference if the said appeal has been made by one-tenth of the members of the Conference present and voting.

5. To hear and determine the legality of action taken by the General Conference, Regional Conference, District Conference, Pastorate Conference, Council, Board or Committee, upon appeal by one-third of the members thereof, or upon the appeal of a majority of the Council of Bishops.

6. To hear appeals arising from decisions of the Regional Courts as hereinafter provided.

7. To make a declaratory decision in the case of a situation where the law of the Church is silent on an issue or where there is any contradiction or ambiguity or where there is more than one meaning of a paragraph or a section of the Disciple of the Church; such a matter will be

> referred to the Judicial Council in accordance with the provisions hereinafter set forth. Decision of the Judicial Council taken on such issues referred to it shall be final and binding and it shall become the law of the Church which will be incorporated in the Discipline.
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> 8. To hear and determine an appeal from a full member of the Methodist Church in India provided the appeal has been forwarded by the Pastorate Conference of the Church of which he is a full member through the Regional Court.
>
> 9. To have such other duties and powers as may be conferred upon it by the General Conference.
>
> 10. To provide its own method of organization and procedure."

17. None of the clauses referred to in Para 59 would permit institution of representation/appeal before the Judicial Council against the Enquiry Officer’s report. On the other hand, going by the provisions governing the disciplinary enquiry, the proper channel after the Enquiry Officer’s Report would be the Executive Council of the General Conference during the interim of quadrennial sessions or the General Conference itself. Albeit, the decision of the Executive Council or the General Conference, as the case may be, can be taken up before the Judicial Council. Suffice it

to note that no express provision is brought to my notice by the Counsel for the Plaintiff to even remotely suggest that when any representation against the Enquiry Officer's report is pending before the Judicial Council that would denude the Executive Council of the General Conference from proceeding in the matter in terms of their powers and duties provided for by the rules. Thus understood, this submission does not commend to me.

18. It was next contended on behalf of the Plaintiff that the decision of the Executive Council is colourable exercise of power. It is argued that in absence of a written complaint, the Executive Council could not have proceeded in the matter at all. For that purpose, reliance was placed on Para 1264.Art.II in Section III which relates to 'Procedure for investigation and Inquiry'. Indeed, this provision requires that the complaint, allegation or charge, written or signed against any Bishop, must in the first instance be directed to the immediate higher person incharge who shall be deemed to be the competent person concerned. The argument, however, clearly

overlooks the setting in which the matter went before Executive Council in the present case. Inasmuch as, the Council of Bishops in the first place had suspended the Plaintiff for his acts of commission and omission which according to them, were serious enough warranting such action. The Plaintiff himself did not question the correctness of that decision, but a Suit came to be filed before the City Civil Court at Ahmedabad by one Gideonbhai B.Christian. In the said proceedings when the matter went up to the High court of Gujarat in Appeal from Order No.393 of 2004, a consensus order was taken from the High Court by the parties. The Plaintiff himself was party to the said proceedings and had appeared before the High Court of Gujarat, represented by his Advocate. On the basis of the consensual order invited by the parties before the High Court, Enquiry Officer was appointed. The Plaintiff consented to the appointment of the Enquiry Officer. Not only that, the Plaintiff participated in the enquiry proceedings without any demur. On submission of the Enquiry Officer’s report, the Plaintiff appeared before the Executive Council and made his

submissions contesting the proposed action. It is too late in the day for the Plaintiff to contend that the proceedings initiated by the Executive Council and the decision thereon are void ab initio on account of absence of a written complaint. There is no substance in this grievance.

19. It was next contended on behalf of the Plaintiff that before taking final decision, the Executive Council did not issue a show-cause notice to the Plaintiff. Even this grievance is without any basis and will have to be negatived. It is seen from the materials on record, in fact, it is accepted by the Plaintiff that, he had appeared before the Executive Council after submission of the Enquiry Officer’s report. Before proceeding in the matter, show-cause notice was thus issued to the Plaintiff, pursuant to which, Plaintiff appeared in the meeting of the Executive Council held on 25th March 2006. He contested the proposed action and made his submissions which are noted in the record. After due deliberations, when the Executive Council decided to terminate the services of the Plaintiff, called upon him to consider

whether he would like to take voluntary retirement instead of proposed action. The Plaintiff asked for time to reflect on the said offer. The meeting was therefore deferred to 29th March 2006. On that day, however, the Plaintiff remained absent on the ground of illness. The Executive Council rejected the request of the Plaintiff for further adjournment and proceeded to take final decision in the matter. Suffice it to observe that it is not a case of proceeding against the Plaintiff without giving him show-cause notice as is contended. Even this submission, therefore, is devoid of merits.

20. It was next contended that no attempt was made by the Executive Council to arrive at some amicable resolution of the dispute before taking final decision in the matter. That lapse was clearly against the spirit of the rules which provide to the contrary. The argument though attractive, is of no avail to the Plaintiff. This submission clearly overlooks that for the seriousness of the charge for which the Plaintiff has been found guilty, the Executive Council was of the considered opinion that the only indulgence

that can be shown to the Plaintiff was to allow him to take voluntary retirement. In that backdrop, offer was made to the Plaintiff on 25th March 2006. The Plaintiff, however, did not avail of that offer for reasons best known to him. Although it is not relevant to decide the points in issue, it may be noted that even before this Court at the end of the hearing of the present Appeal, option was given to the Plaintiff to consider whether he was still willing to avail of the offer which was given by the Executive Council on 25th March 2006. The Defendants were more than willing to renew the same offer. However, the Plaintiff chose not to avail of the said offer; but insisted that the matter be first referred to the Council of Bishops and on their recommendation, the Executive Council may take final decision. The Defendants through Counsel, submit that the Council of Bishops is a subordinate body to the Executive Council of the General Conference. The matter having been fully analysed by the Executive Council and the Executive Council having reached at a considered opinion to remove the Plaintiff, there was no other way in which the matter could be resolved. At best, the

Plaintiff could be given option to take voluntary retirement. In the circumstances, it is not as if the Executive Council took final decision without exploring the possibility of reconciliation with the Plaintiff of limited extent though. In fact, the Executive Council gave ample options to the Plaintiff including to take voluntary retirement, which is not accepted by the Plaintiff.

21. Mr.Govilkar appearing for the Plaintiff fairly accepts that there is no other contention which requires to be considered in this Judgment. He, however, has "now" raised a new point that in the Memo of Appeal as filed, no ground has been taken to question the correctness of the finding of the Trial Court that there is no authority to remove Bishop. This argument is raised for the first time when the Judgment has already been pronounced up to this stage. The Defendant cannot be allowed to take the Appellants by surprise. Besides, it is purely a question of law to be answered on the basis of interpretation of the relevant provisions.

22. For the reasons already recorded earlier, it necessarily follows that if interim relief granted by the Trial Court is upheld, that order will be in the nature of a mandatory order. There is no good reason in the fact situation of the present case to pass such a drastic order. The Defendant Nos.2 and 5 have already taken over the charge of Office of Bishop for Maharashtra and Gujarat after the removal of the Plaintiff. To my mind, there was no tangible basis before the Trial Court to grant such a drastic interim relief in favour of the Plaintiff. The Trial Court has proceeded to decide the issue on surmises and conjectures-as can be seen from the observation that the proposed action of the Defendants was to take control of the institution so as to siphon-off funds and misappropriate the property of the Church. There is no basis noted by the Trial Court to reach at this conclusion.

23. All other reasons recorded by the Trial Court already having been dealt with in the earlier part of this decision, the only course open to me is to set-aside the impugned Judgment and Order and

as a consequence, to reject the Notice of Motion filed by the Respondent No.1/Plaintiff.

24. Accordingly, this Appeal succeeds. The impugned Judgment and Order is set-aside. The Notice of Motion No.1466 of 2006 filed by the Respondent No.1/Plaintiff is rejected with costs.

25. At this stage, Mr.Govilkar submits that the interim arrangement as obtained between the parties be ordered to be maintained for a reasonable period to enable the Respondent No.1/Plaintiff to take up the matter in Appeal before the Apex Court.

26. Mr.Vashi appearing for the Appellants, however, strongly opposes this request on the argument that the Respondent No.1 has misused the indulgence shown by this Court inasmuch as he has interfered in administrative matters and also had the audacity to appoint four persons taking advantage of the interim arrangement. This position is, however, denied by Mr.Govilkar on instructions of the Plaintiff.

27. Be that as it may, as the interim arrangement ordered by this Court has operated since August 2006, in the interest of justice, same arrangement be continued for a further period of four weeks from today.

28. Appeal and the companion Civil Application stand disposed of on the above terms.

A.M.KHANWILKAR, J.